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November 16, 2004

Re: Ohio Valley Railroad Company -Petition for Expedited Relief  
STB Finance Docket No. ~~3486~~ 34608

ENTERED  
Office of Proceedings

NOV 22 2004

Part of  
Public Record

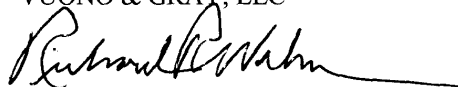
The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423

Dear Secretary Williams:

Enclosed please find the Reply of Ohio Valley Railroad Company ("OVR") and Mid-America Locomotive & Car Repair, Inc. ("Mid-America") to the Motion for Extension of Time filed by Indiana Southwestern Railway Co. ("ISW") on November 11, 2004. Copies of this Reply have been served on all parties of record.

Very truly yours,

VUONO & GRAY, LLC



Richard R. Wilson, Esq.  
Attorney for Ohio Valley Railroad Company  
and Mid-America Locomotive  
and Car Repair, Inc.

RRW/bab

cc: Louis G. Gitomer, Esq. (w/enc.)  
Daniel A. LaKemper, Esq. (w/enc.)  
Ohio Valley Railroad Co.  
Mid-America Locomotive & Car Repair, Inc.  
Office of Proceedings, STB



ENTERED  
Office of Proceedings

BEFORE THE

NOV 22 2004

SURFACE TRANSPORTATION BOARD

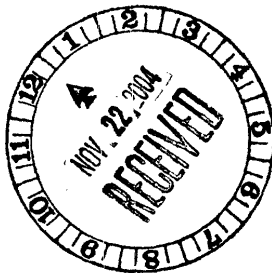
Part of  
Public Record

34608  
FINANCE DOCKET NO. ~~34486~~

OHIO VALLEY RAILROAD COMPANY  
AND  
MID-AMERICA LOCOMOTIVE & CAR REPAIR, INC.

-PETITION FOR EXPEDITED RELIEF FOR SERVICE  
EMERGENCIES PURSUANT TO 49 C.F.R. §§1146 AND 1147

REPLY OF OHIO VALLEY RAILROAD COMPANY  
AND  
MID-AMERICA LOCOMOTIVE & CAR REPAIR, INC.  
TO THE MOTION FOR EXTENSION OF TIME TO RESPOND TO  
PETITION FOR EXPEDITED RELIEF



Richard R. Wilson, Esq.  
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2310 Grant Building  
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412-471-1800  
Attorney for Railroad Ventures, Inc.

Dated: November 16, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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34608  
FINANCE DOCKET NO. ~~34486~~

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OHIO VALLEY RAILROAD COMPANY  
AND  
MID-AMERICA LOCOMOTIVE & CAR REPAIR, INC.  
  
-PETITION FOR EXPEDITED RELIEF FOR SERVICE  
EMERGENCIES PURSUANT TO 49 C.F.R. §§1146 AND 1147

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REPLY OF OHIO VALLEY RAILROAD COMPANY  
AND  
MID-AMERICA LOCOMOTIVE & CAR REPAIR, INC.  
TO THE MOTION FOR EXTENSION OF TIME TO RESPOND TO  
PETITION FOR EXPEDITED RELIEF

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Ohio Valley Railroad Company ("OVR") and Mid-American Locomotive and Car Repair, Inc. ("Mid-America") file this Reply to the Motion of Indiana Southwestern Railway Company ("ISW") for a twenty (20) day extension of time in which to respond to OVR and Mid-America's Petition for Expedited Relief for Service Emergencies and in support thereof state as follows:

1. On October 22, 2004, OVR and Mid-America filed their Petition for Expedited Relief for Service Emergencies pursuant to 49 C.F.R. §§1146 and 1147. Under the provisions of 49 C.F.R. §1146.1(b)(2) "the incumbent carrier must file a reply

to a petition under this paragraph within five (5) business days.” Under the Commission’s rules, ISW’s Reply was required to be filed with the STB no later than October 29, 2004. Furthermore, on October 22, 2004, counsel for ISW advised the Board that “ISW intends to file a full response to this... petition, as soon as possible.”

Furthermore, on October 22, 2004, counsel for ISW wrote to counsel for Petitioners indicating that ISW would reinstall a switch connection with OVR for the purpose of enabling captive traffic located on OVR to be shipped in interstate commerce. Despite efforts by OVR to establish interchange arrangements with ISW, ISW has not responded to OVR’s efforts and the switch has not been reinstalled.

2. Now, on November 12, 2004, almost a month after ISW improperly removed the switch connections to OVR rail facilities and thirteen (13) days after ISW’s Reply to the Petition for Expedited Relief was to be filed with the Board, counsel for ISW seeks an additional twenty (20) days in which to respond to the Petition for Expedited Relief. Not only is ISW’s Reply long overdue, but its Motion for an Extension of Time is also untimely and has been submitted long after the time period required by 49 C.F.R. §1146.

3. The absence of any communication or progress from ISW to OVR regarding the reinstallation of the switches or the establishment of interchange arrangements belies the representation set forth in the ISW Motion for Extension of Time. Furthermore, the Motion contains no explanation or factual circumstances justifying ISW’s failure to file a Reply within the five (5) day period prescribed by the Board’s regulations, nor does it explain why it has taken ISW thirteen (13) additional days in which to request this extension when it is entirely within ISW’s power to reinstall the

switch connections and thereby mitigate the emergency circumstances about which Petitioners complained.

4. Moreover, as indicated by recent correspondence addressed to the Board and Mr. LaKemper, (Exhibit A) Petitioners have been approached by the owner of eighty gondola cars seeking to have these cars repaired by Mid-America. However, this business opportunity which would enable ISW to earn intermediate switching revenues, cannot be responded to by Mid-America unless and until ISW reinstalls switch connections at the north and south end of Harwood Yard.

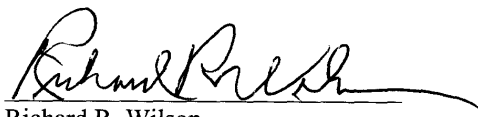
5. It is therefore clear that the sole reason for ISW's Motion for Extension of Time is to further extend and aggravate the service emergency which ISW has created in order to commercially preclude and injure business opportunities being presented to OVR and Mid-America.

6. Although reasonable requests for extensions of time are generally granted by the Board and are almost invariably consented to as a matter of professional courtesy by the Petitioner's counsel, no such request was received from ISW and under the circumstances in this proceeding ISW's request for extension is unjustified and should be denied.

Respectfully submitted,

VUONO & GRAY, LLC

By:



Richard R. Wilson  
Attorney for Ohio Valley Railroad  
Company and Mid-America  
Locomotive and Car Repair, Inc.

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November 11, 2004

Re: Ohio Valley Railroad Company  
- Petition for Expedited Relief  
STB Finance Docket No. 34486  
Our File 5028

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423

Daniel A. LaKemper  
General Counsel  
Indiana Southwestern Railway Co.  
1318 S. Johanson Road  
Peoria, IL 61607

Dear Gentlemen:

The purpose of this letter is to advise you that upon receipt of the October 22, 2004 letter from Mr. LaKemper, our client, Ohio Valley Railroad Company ("OVR") provided Indiana Southwestern Railway Co. ("ISW") with necessary information regarding reporting marks, etc. from the AAR and forwarded a proposed interchange agreement which would permit the parties to perform interchange freight cars within Harwood Yard on OVR tracks. Despite Mr. LaKemper's representation that ISW would reinstall one switch to permit the interchange of cars trapped by ISW's removal of switches with OVR rail facilities, this switch has not been reinstalled and ISW has not responded to proposed interchange arrangements from OVR.

This letter is to also advise you that OVR's shipper, Mid-America Locomotive and Car Repair, Inc. has received a proposal to repair and service a fleet of eighty (80) gondola cars at its Harwood Yard car repair facility served by OVR. This proposal provides an opportunity for ISW to earn intermediate switching charges on this traffic, but for the fact that ISW has not yet reinstalled the south and north end switches into Harwood Yard from its rail line.

EXHIBIT A

Judge Vernon A. Williams  
Daniel A. LaKemper, Esq.  
Page 2  
November 11, 2004

Continued refusal on the part of ISW to reinstall its switch connections with OVR constitutes a refusal on the part of ISW to comply with its common carrier obligations. Should this business be lost to Mid-America Locomotive and Car Repair, Inc., my client will hold ISW fully responsible for all losses and damages incurred as a consequence of ISW's refusal to provide common carrier interchange service.

The facts and circumstances which prompted our clients' Petition for Expedited Relief on October 26, 2004 have not been rectified and ISW has taken no steps to resolve this matter with OVR. Thus, the relief sought by our clients is needed more urgently than ever.

Very truly yours,

VUONO & GRAY, LLC



Richard R. Wilson, Esq.  
Attorney for Ohio Valley Railroad  
Company and Mid-America Locomotive  
and Car Repair, Inc.

sb/35422


cc: Louis Gitomer, Esq.  
Ohio Valley Railroad Co.  
Mid-America Locomotive & Car Repair, Inc.  
Office of Proceedings, STB

CERTIFICATE OF SERVICE

Richard R. Wilson, Esq., attorney for Ohio Valley Railroad Company and Mid-America Locomotive and Car Repair, Inc., hereby certifies that on the 16<sup>th</sup> day of November, 2004, he did serve a true and correct copy of the foregoing Reply to ISW's Motion for Extension of Time upon the following counsel of record, by first class mail, postage prepaid, at their offices as set forth below:

Louis E. Gitomer, Esq.  
Ball Janik, LLP  
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Washington, D.C. 20005

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1318 S. Johanson Road  
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Richard R. Wilson, Esq.